105 Box 45 - JGR/Pro Bono (11) – Roberts, John G.: Files
SERIES I: Subject File

THE WHITE HOUSE

WASHINGTON

October 10, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Expiration of Section 120 of the Internal Revenue Code

On September 19, I submitted draft replies for your signature to letters Mr. Baker received from ABA President Wallace D. Riley and former ABA Presidednt Morris Harrell. Riley and Harrell wrote Baker to urge that the Administration act to prevent Section 120 of the Internal Revenue Code from expiring. As I explained in my memorandum, Section 120 grants preferred tax treatment for employer-funded legal assistance programs for employees. Unless extended by Congress it will expire at the end of this year pursuant to a sunset provision.

The draft replies I submitted noted that the Administration, in Treasury testimony, opposed extension of Section 120. You wrote back that the replies were difficult for you to send, because you needed the support of Riley and Harrell on another matter. The attached revised draft omits the reference to the Administration position, simply thanking the two for their views and assuring them that they will be appropriately considered.

Attachments

THE WHITE HOUSE

WASHINGTON

October 10, 1984

Dear Mr. ~~Harrell~~ Morris:

Thank you for your letter to White House Chief of Staff James A. Baker, III, concerning the expiration of Section 120 of the Internal Revenue Code. In that letter you expressed your support for extension of Section 120, which provides special tax treatment for group legal services plans.

We appreciate having the benefit of your views on this matter, and I certainly recognize your particular interest and that of the American Bar Association. Please be assured that I will share your views and concerns with appropriate officials at the Department of the Treasury.

Sincerely,

Orig. signed by FFF

Fred F. Fielding
Counsel to the President

Morris Harrell, Esquire
4200 RepublicBank Tower
Dallas, Texas 75201

FFF:JGR:aea 10/10/84
bcc: FFFielding/JGRoberts/SUbj/Chron

THE WHITE HOUSE

WASHINGTON

October 10, 1984

MEMORANDUM FOR PETER J. WALLISON
GENERAL COUNSEL
U.S. DEPARTMENT OF THE TREASURY

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Expiration of Section 120
of the Internal Revenue Code

The attached correspondence to James A. Baker, III, together with copies of my replies, is referred for whatever review and additional reply, if any, you consider appropriate. The correspondence, from the two most recent Presidents of the American Bar Association, concerns the imminent expiration of Section 120 of the Internal Revenue Code.

Attachments

FFF:JGR:aea 10/10/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

October 10, 1984

Dear Mr. ~~Riley~~ Wally:

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Sincerely,

Orig. signed by FFF

Fred F. Fielding
Counsel to the President

Wallace D. Riley, Esquire
American Bar Association
American Bar Center
Chicago, Illinois 60637

FFF:JGR:aea 10/10/84
bcc: FFFielding/JGRoberts/SUbj/Chron

THE WHITE HOUSE

WASHINGTON

October 10, 1984

Dear Mr. Riley:

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Sincerely,

Fred F. Fielding
Counsel to the President

Wallace D. Riley, Esquire
American Bar Association
American Bar Center
Chicago, Illinois 60637

FFF:JGR:aea 10/10/84
bcc: FFFielding/JGRoberts/SUbj/Chron

THE WHITE HOUSE

WASHINGTON

October 10, 1984

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Fred F. Fielding
Counsel to the President

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4200 RepublicBank Tower
Dallas, Texas 75201

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THE WHITE HOUSE

WASHINGTON

October 10, 1984

MEMORANDUM FOR PETER J. WALLISON
GENERAL COUNSEL
U.S. DEPARTMENT OF THE TREASURY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Expiration of Section 120
of the Internal Revenue Code

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Attachments

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cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

September 19, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Expiration of Section 120 of the Internal Revenue Code

Mr. Baker's office has referred to us two letters Mr. Baker received, from American Bar Association President Wallace D. Riley and former ABA President Morris Harrell. In their letters Riley and Harrell express the ABA's support for extension of Section 120 of the Internal Revenue Code, 26 U.S.C. § 120. Unless Congress acts, Section 120 will expire pursuant to its sunset provision on December 31, 1984. 26 U.S.C. § 120(e).

Section 120 was first enacted in 1976 and was extended in 1981. It provides for the exclusion from an employee's gross income of amounts contributed by an employer to a group legal services plan providing legal services to the employee and his spouse or dependents.

Prior to enactment of Section 120, the provision of legal services by the employer was considered the receipt of taxable income by the employee. The ABA, both through the instant letters and through testimony delivered before Congress, stresses the desirability of providing group legal services to employees as the main reason to continue the special tax treatment of this form of employee compensation in Section 120.

The Administration, however, opposes extension of Section 120. Treasury opposed enactment of Section 120 in 1976, opposed extension of it in 1981, and opposes further extension of it now. Our position was articulated on April 12, 1984, in testimony delivered by Treasury Tax Legislative Counsel Robert G. Woodward. According to Woodward's testimony, the desirability of group legal services is beside the point. As Woodward testified: "Compensation paid in the form of legal services should be taxed in the same manner as any other type of compensation received by employees. The existence of special exemptions for particular types of compensation only encourages employees to rearrange their affairs so that compensation is received in a non-taxable form." Greg Jones of OMB advises me that the Administration position on this question is unchanged.

Riley and Harrell will not be pleased with our response, but we can do little more than send them a copy of the Treasury testimony, thank them for their views, and assure them we will convey those views to Treasury. Drafts doing all of this are attached.

Attachments

THE WHITE HOUSE

WASHINGTON

September 19, 1984

MEMORANDUM FOR PETER J. WALLISON
GENERAL COUNSEL
U.S. DEPARTMENT OF THE TREASURY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Expiration of Section 120
of the Internal Revenue Code

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cc: FFFielding/JGRoberts/Subj/Chron

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As you may be aware, the Administration, in testimony delivered by the Department of the Treasury, has taken a position in opposition to extension of Section 120. This position is consistent with the opposition of Treasury to enactment of Section 120 in 1976 and to the extension of Section 120 in 1981. I have enclosed a copy of the pertinent testimony for your information.

We do, however, appreciate having the benefit of your views on this matter, and I certainly recognize your particular interest and that of the American Bar Association. Please be assured that I will share your views and concerns with appropriate officials at the Department of the Treasury.

Sincerely,

Fred F. Fielding
Counsel to the President

Morris Harrell, Esquire
4200 RepublicBank Tower
Dallas, Texas 75201

FFF:JGR:aea 9/19/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

September 19, 1984

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We do, however, appreciate having the benefit of your views on this matter, and I certainly recognize your particular interest and that of the American Bar Association. Please be assured that I will share your views and concerns with appropriate officials at the Department of the Treasury.

Sincerely,

Fred F. Fielding
Counsel to the President

Wallace D. Riley, Esquire
American Bar Association
American Bar Center
Chicago, Illinois 60637

FFF:JGR:aea 9/19/84
bcc: FFFielding/JGRoberts/Subj/Chron

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WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Morris Harrell and Wallace Riley

☐ **MI Mail Report** **User Codes:** (A) _____ (B) _____ (C) _____

Subject: Expiration of Section 120 of the Internal Revenue Code

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
WHolland		ORIGINATOR DDI	84/08/11			1 1
CWAT 18		Referral Note: D DDI	84/08/13		S	84/08/23
		Referral Note:	1 1			1 1
		Referral Note:	1 1			1 1
		Referral Note:	1 1			1 1
		Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: Aug 84 Morris Harrell letter to James Baker also attached Mar 16 84 Statement of Patrick Keating attached DDI

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
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5/81

AMERICAN BAR ASSOCIATION

OFFICE OF THE PRESIDENT
WALLACE D. RILEY
AMERICAN BAR CENTER
CHICAGO, ILLINOIS 60637
TELEPHONE: 312 / 947-4042

July 30, 1984

251322 cw

Hon. James A. Baker III
Chief of Staff and
Assistant to the President
The White House
Washington, D.C. 20500

Dear Jim:

I am writing to bring to your attention a matter which is of great concern to the American Bar Association, and indeed the organized bar nationally.

Legislation now pending in the Congress would extend Section 120 of the Internal Revenue Code which encourages private-sector initiatives designed to help millions of middle-class persons obtain legal assistance needed to exercise their rights under our system of laws. Section 120 was enacted in 1976 and will expire at the end of this year if no further action is taken.

Section 120 provides for group legal services plans funded by employers to be treated on an equitable basis. It allows the employer to take a business deduction for the amounts the employer contributes to the plan and provides that the employee shall not be taxed on either the pro-rata share of the employer's contributions or on the value of any legal services he or she may receive under the plan.

Section 120 places employer-funded group legal services plans on roughly the same footing as group medical plans and other statutory fringe benefits established to insure an employee's basic well-being and ability to participate in our economy as a productive, self-supporting citizen. We believe the medical analogy is very appropriate. Just as employees may incur serious medical problems which, if not promptly dealt with, can keep an employee off the job, so too can serious legal difficulties cause increased absences from and inattention to work.

We believe that the lack of timely legal assistance is costly to employers, employees and the public, as illustrated in the example on Page 6 of the attached testimony presented by an ABA witness at a Senate hearing earlier this year. Group legal services plans emphasize preventive legal services aimed at helping the employee to avoid potential law-related catastrophes. In addition to the direct benefits to employers and employees, we believe that these plans can reduce the burden on our courts, and the associated public costs, by encouraging employees to consult a lawyer at the onset of a potential legal problem, thereby avoiding litigation.

An estimated 5.5 million Americans are presently covered by employer-funded group legal services plans. The growth of such plans has been fostered by the presence of Section 120. Its absence will act as an enormous inhibitor to the continuation of such programs and their availability to millions of other working families.

We understand that the Treasury Department has nominally opposed the provision on fiscal grounds, although the cost to the Treasury in 1983 has been estimated at only $25 million. However, we would hope that the Administration recognizes that the benefits of these plans, especially to middle-income workers and their families, far outweigh the minimal cost and will support the extension of the current provisions. The direct cost is small, and the indirect savings to our economy could be substantial. We would also hope that the Administration will support making the provision permanent, as provided in H.R. 5028 and S. 2080.

I hope that you will agree with our view of this matter and assist us in our efforts. I would be happy to provide you with any additional information you desire.

Sincerely,

Wally

Wallace D. Riley

WDR:dcm
Enclosure

1713d

AMERICAN BAR ASSOCIATION

GOVERNMENTAL AFFAIRS GROUP • 1800 M STREET, N.W. • WASHINGTON, D.C. 20036 • (202) 331-2200

STATEMENT

of

PATRICK J. KEATING

on behalf of the

AMERICAN BAR ASSOCIATION

before the

COMMITTEE ON FINANCE
UNITED STATES SENATE

on the subject of

S.2080, GROUP LEGAL SERVICES TAX PROVISION

March 16, 1984

Mr. Chairman and Members of the Subcommittee:

My name is Patrick J. Keating. I am the Chairman of the Special Committee on Prepaid Legal Services of the American Bar Association and I am in the private practice of law in Detroit, Michigan.

I am appearing here today at the request of Wallace D. Riley, President of the American Bar Association, who regrets that he is not able to appear personally because of an important prior commitment.

The ABA strongly believes that the making permanent of Section 120 of the Internal Revenue Code as provided in this bill addresses is of critical importance to millions of people throughout the country. Indeed only last month our Board of Governors selected passage of S. 2080 as one of a small group of top legislative priorities for 1984.

As the Committee knows, Section 120 determines the tax treatment of qualified group legal services plans. It provides that employees may exclude from their taxable income contributions made by an employer to such a plan and the value of any legal services received by the employee under the plan. I would like to state briefly why the American Bar Association has supported this tax treatment of employer paid legal plans and why we feel that the permanence of Section 120 is critical at this juncture.

Recognizing the need to develop mechanisms to help middle-income Americans gain access to personal legal services, the American Bar Association has worked for over ten years to develop and perfect the concept of prepaid legal services. In 1974, we joined with a

coalition of labor, insurance, consumer and other groups to create an incentive for employers to provide legal services as a benefit for employees for much the same reason as they provide medical and other insurance benefits: to assure the personal well-being of employees and their families so that they can continue to be permanent and productive members of the workforce. If an employee is sick, he or she cannot work. Being ill in the workplace can greatly reduce productivity. By establishing tax incentives for employers to provide or pay for medical care, the Congress has recognized the economic benefits inherent in protecting an employee's physical health.

Legal problems can affect the emotional and financial health of employees. Financial problems often have legal implications. Falling behind in mortgage or loan payments can lead to wage garnishment and the possibility of eventual bankruptcy, both of which may involve not only the employee but the employer and the economy as well.

The incidence of these problems can have a significant effect on an employee's work productivity and often lead to to absences from work to go to court or otherwise deal with a problem personally. The following case study was compiled from actual cases where what initially was a minor personal problem led to serious personal and legal trouble:

Robert Simpson (fictitious name) worked as a quality control inspector at an electronics plant for six years. During that period, his performance evaluations were excellent and his

attendance record perfect. Mr. Simpson was well-liked by his fellow employees and was credited with making a number of suggestions which markedly improved quality control procedures. He was active in his local union and was being considered by management for promotion to supervisor of his section.

In the seventh year of his employment, the quality of components coming off the assembly line where Mr. Simpson was stationed dropped off sharply. In addition, his attendance record began to deteriorate and he was absent from a number of important union meetings. Supervisors and co-workers tried unsuccessfully to ascertain the reason for this change in Mr. Simpson's behavior. He became short-tempered, explaining that he had a few minor personal problems he would take care of shortly. At one point, Mr. Simpson's job performance declined so much that both his co-workers and management feared that he might not only lose the chance for promotion but also his job as well.

Mr. Simpson's job performance suffered because he was distracted by serious legal difficulties. At the conclusion of his sixth year of employment, he moved his family to an older apartment building in a northwest suburb of the city. Simpson entered into a two-year lease, but did not consult an attorney as to the terms of the lease agreement. A month after the Simpson family moved in, a small fire broke out on the first floor of the building, and Mr. Simpson, who lived on the third floor, became concerned over the need for fire protection. The landlord refused to provide alarms and extinguishers, and Mr. Simpson, not the smartest of businessmen,

decided to purchase $2,400 worth of fire protection equipment on an installment note.

Had Mr. Simpson talked to a lawyer before purchasing the equipment, he would have discovered that the landlord was obligated by both state law and municipal ordinance to provide fire protection equipment. He would also have been shown where the lease agreement he entered into specifically stated that the landlord would provide such equipment on request and that rent could be withheld if such a request was not honored.

Three months after the purchase of the equipment, Mr. Simpson discovered that he could not meet the installment payments. The finance company refused to listen to any excuses and promptly sued Mr. Simpson for $2,400 in municipal court. Mr. Simpson, unaware of the ramifications of the suit and without funds to retain a lawyer, failed to answer the complaint and a default judgment was entered against him. The fire equipment was repossessed and sold at a sheriff's sale for $400, with a deficiency balance of $2,000 showing as an unsatisfied judgment on the record of the court. Mr. Simpson was then summoned to court on a judgment-debtor hearing and his wages were immediately garnisheed.

Over the next six months, as Mr. Simpson attempted to pay off the judgment against him, his other monthly obligations fell into arrears. He lost his gasoline credit card, the rent was always late and his other creditors began harassing him for payment of his obligations. Several law suits were filed, all resulting in default

judgments. Mr. Simpson attempted to secure a loan to relieve his financial burden, but loan companies refused to consider his application because of the court judgments.

Mr. Simpson became short tempered and abusive with his wife and children -- a changed man with his family. Because of the change in him and the pressure of continual harassment by creditors, Mrs. Simpson informed her husband that she had had enough and filed for divorce. Simpson was served with the complaint at work, much to his embarrassment, along with motions for expense money, temporary alimony and support and custody of the children. Ironically, since the rent was once again late, the landlord filed for eviction. During the next six months, numerous hearings on the pending divorce were held and Mr. Simpson had little time for anything but the legal battles that surrounded him.

Could an attorney have prevented many of Mr. Simpson's problems? Probably. Certainly, an attorney's review of the original lease agreement might have prevented the credit purchase of the fire prevention equipment in the first place which seems to have led to many of his other difficulties. Even assuming that the purchase had been made anyway, many of the judgment-debtor problems could have been immediately relieved through the attorney's active participation with creditors. The divorce might well have been avoided if the credit problems had been alleviated initially. Even if the divorce was unavoidable, the availability of an attorney prior to the initiation of the suit by Mrs. Simpson could have prevented a lengthy contested proceeding.

be this case typical. We don't think so, though certainly many situations can turn out to be less disastrous. Let's take a "minor" matter which actually occurred in a midwest office.

An employee was billed by a hospital for approximately $130 which he thought he didn't owe and which he had no money to pay in any event. Repeated requests for payment were ignored until the employee received a summons from county court located 35 miles away from the office. The employee mentioned the need to take time out from work to go to court to his supervisor, who advised that the employee talk to a lawyer first. A lawyer was consulted and eventually accompanied the employee to court twice, requiring the employee to be absent from work for one-half day each time, and a settlement with payment arrangements was worked out with the lawyer for the hospital.

The cost to the employee associated with this problem was calculated at $358.84, including $225 in attorney fees, $59.84 in lost wages, $28 in transportation to court and $46 in court fees. In addition, the employer lost the services of the employee for two mornings, the federal government lost approximately $11.80 in tax revenue on the employee's lost earnings and the hospital had to pay its attorney to handle the case in court.

The point of this story is that the attorney indicated afterward that had she been called as soon as the employee started receiving past-due notices from the hospital, she could have negotiated a payment schedule with the hospital by phone, avoiding the law suit,

court appearances, costs, time off from work and the worry which had plagued the employee during the three months while this situation was developing.

How could an employer-paid legal benefit plan have helped in this second, more typical case? First, the employee, realizing that arrangements for consulting and paying for a lawyer were part of his compensation, the question of whether the employee had the funds to hire an attorney would not come up. Secondly, by having this barrier removed, the employee would have had the incentive to consult a lawyer early as soon as the problem presented itself, rather than waiting until the last minute and having a law suit filed against him. Third, the employer would not have lost the services of the employee both for the time taken to go to court and in the preceding months during which the employee's attention was distracted from his work because of worry and phone calls to and from the hospital.

Will employees actually take advantage of a legal services benefit to their own and the employer's advantage? The statistics we have gathered since Section 120 was enacted in 1976 indicates that they will. A comprehensive survey of the legal needs of the public published in 1977 by the American Bar foundation and carried out by the National Opinion Research Center indicated that more than 35% of the population encounter problems each year that could be resolved by a lawyer, yet only 10% actually seek legal assistance. In contrast, our information indicates that an average of 20% of the employees covered by a group legal plan consult a lawyer at least once annually.

These employee-users are in a majority of cases receiving preventive legal assistance that often make it possible to avoid litigation or serious, protracted remedial services. Some of the newest prepaid legal plans feature legal advice and consultation by phone as a benefit. The administrators of these plan have told us that between 60% and 80% of the problems presented by plan members can be resolved over the phone in one or two calls or with telephone negotiation with adverse parties.

It is clear to us that after 10 years of experimentation with prepaid legal service plans, the promise that they hold for establishing a private-sector mechanism for delivering needed personal legal services to employees has been fulfilled. Direct tax revenue loss is considered minimal, as indicated in the March, 1983 estimates prepared by the staff of the Joint Committee on Taxation. Further, we suggest that tax dollars can even be saved by reductions in the use of our courts to resolve minor disputes as a result of preventive legal services being made available to employees through qualified group legal service plans. And the benefit to our economy of minimizing the impact of employee personal and legal problems on productivity in the workplace should not be taken lightly.

In 1976, Congress acted wisely in incorporating a termination provision in Section 120 which would force us to evaluate the efficacy of this tax policy in stimulating the development of plans which provide access to needed personal legal services. Further, controls built into Subsection (c)(1) of Section 120 assure that qualified group legal service plan will not discriminate in favor of

highly-paid employees and wealthy owners of businesses, thereby insuring that middle-income Americans are the major beneficiaries of these plans. We are convinced that the plans have proved themselves, and we know that employers throughout the country are planning to incorporate legal service benefits into their compensation programs as soon as the taxation questions raised by the pending expiration of Section 120 have been resolved.

We urge that S.2080 be passed into law at the earliest date possible so that the millions employees who now take advantage of employer-furnished legal services can continue to do so and so that employers who have recognized the value of this benefit in maintaining good employee relations and productivity can move forward to implement a qualified group legal service plan.

AMERICAN BAR ASSOCIATION

IMMEDIATE PAST PRESIDENT
MORRIS HARRELL
AMERICAN BAR CENTER
CHICAGO, ILLINOIS 60637
TELEPHONE: 312 / 947-4042

PLEASE REPLY TO:
4200 REPUBLICBANK TOWER
DALLAS, TEXAS 75201
TELEPHONE: 214 / 742-1021

August 1, 1984

Hon. James A. Baker III
Chief of Staff and
Assistant to the President
The White House
Washington, D.C. 20500

Dear Jim:

You no doubt have received a letter from my successor as ABA President, Wallace D. Riley regarding the American Bar Associations's concern over the expiration of Section 120 of the Internal Revenue Code.

I just want to let you know that I firmly support the concept of group legal services because I know the benefits which can be derived from timely legal assistance. We know that working families, just like large corporations and the wealthy, need access to our justice system. My tenure as President of the ABA made me well aware of the legal needs of the public and the concomitant need to develop ways to make legal services affordable for middle-income people.

The organized bar has been working for over fifteen years to this end. Millions of Americans, and I believe our society as a whole, are now the beneficiaries of our labors. With the incentive provided to employers to establish group legal plans under Section 120, insurance companies and others have responded with coverage for personal legal expenses of employees. Moreover, the costs associated with these plans have not risen substantially over the last ten years, partially because most group legal plans require covered employees to share in the cost of at least some of the services they receive.

I am convinced that the benefits, both economic and otherwise, of making preventive legal assistance available to the majority of our citizens far outweigh the quite minimal estimated loss of direct government revenues associated with the tax treatment afforded by Section 120. I hope you share my view and will help in encouraging Administration support for the legislation in Congress which would make this Code section permanent.

I want to thank you in advance for your consideration of this important issue.

Sincerely,

Morris

Morris Harrell

(1713d/4-5)

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO John Roberts	Take necessary action ☐
	Approval or signature ☐
	Comment ☐
	Prepare reply ☐
	Discuss with me ☐
	For your information ☐
	See remarks below ☐
FROM Greg Jones 9/18/84	DATE

REMARKS

This is the Treasury testimony on group legal plans that we discussed on the telephone.

OMB FORM 4
Rev Jul 82

TREASURY NEWS

Department of the Treasury • Washington, D.C. • Telephone 566-2041

For Release Upon Delivery
Expected at 10:00 A.M.
April 12, 1984

STATEMENT OF
ROBERT G. WOODWARD
TAX LEGISLATIVE COUNSEL
DEPARTMENT OF THE TREASURY
BEFORE THE
SUBCOMMITTEE ON SELECT REVENUE MEASURES
OF THE
HOUSE COMMITTEE ON WAYS AND MEANS

Mr. Chairman and Members of the Subcommittee:

I am pleased to present the views of the Treasury Department on the following bills:

H.R. 676, which would extend to certain educational institutions the exception from the debt-financed property rules that is currently applicable to qualified pension trusts;

H.R. 2697, which would increase the mileage allowance for charitable deduction purposes to that allowed for the business expense deduction;

H.R. 4114, which would allow a deferral of an employee's income and employer's deduction from the date of exercise of a nonqualified employee stock option until the date of disposition of the stock received on exercise of the option;

H.R. 4357, which would eliminate capital gain treatment for gains on certain sales of stock by key shareholders and would deny deductions to corporations for payments under so-called "golden parachute" contracts; and

H.R. 5028, which would allow a permanent exclusion for benefits under group legal services plans.

I will discuss each bill in turn.

H.R. 676
Exemption from the Unrelated Business Income Tax for Debt-Financed Real Property Investments of Schools

Background

Although exempt organizations generally are exempt from tax, a tax is imposed on income earned by an exempt organization from business activities that are unrelated to its exempt purpose. Exceptions to this tax on unrelated business income are provided for certain traditional types of investment income (rents, royalties, dividends, and interest) unless the acquisition or improvement of the property producing the income is financed by debt. Subject to limited exceptions, a share of any income from debt-financed property, proportional to the ratio of debt on the property to the adjusted basis of the property, is treated as income from an unrelated trade or business.

The original rules relating to debt-financed property were enacted in 1950 in response to abusive sale-leaseback transactions between tax-exempt organizations and taxable owners of active businesses. These transactions typically involved a tax-exempt organization's purchase of an active business, financed primarily by a contingent, nonrecourse note, followed by a lease of the assets of the business to the seller. The effect of these transactions was to convert the ordinary income of the business into capital gains for the seller while allowing the tax-exempt organization eventually to acquire property with little or no investment of its own funds. The primary objection to sale-leaseback arrangements involving borrowed funds was that they permitted an organization's tax exemption to benefit the taxable seller, either by conversion of ordinary income into capital gain income or by payment of a higher price for the property than a taxable purchaser would pay.

Unfortunately, the 1950 legislation to tax income from certain leases was insufficient to prevent abuse because new forms of transactions involving leveraged investments quickly developed. In response to these new transactions, the unrelated business income tax rules were strengthened in 1969 by subjecting to tax the income received from all kinds of debt-financed property. This broad revision was designed to deal with all types of abuses involving leveraged investments by tax-exempt organizations.

An exception to the debt-financed property rules was added to the Internal Revenue Code by the Miscellaneous Revenue Act of 1980 (P.L. 96-605) for debt-financed real property investments of pension trusts that satisfy certain conditions. Section 110(b) of that Act specifically stated that this exception was not to be considered precedent for extending the exception to other exempt organizations. The stated reason for providing this special exception was that exemption for investment income of qualified retirement trusts is an essential tax incentive which is provided to tax-qualified plans in order to enable them to accumulate funds to satisfy their exempt purpose -- the payment of employee benefits. The reason for limiting the exception to investments by pension trusts was that the assets of such trusts will ultimately be used to pay taxable benefits to individual recipients, whereas the investment assets of other exempt organizations are not likely to be used for the purpose of providing benefits that will be taxable at individual rates.

H.R. 676

H.R. 676 would provide an exception to the debt-financed rules for investments in real estate by schools and certain affiliated support organizations. However, the exception would not apply to a real estate investment if --

(1) the acquisition price is not a fixed amount;

(2) the amount of any indebtedness, any amount payable with respect to any indebtedness, or the time for making any payment with respect to any indebtedness is dependent upon the revenue, income, or profits derived from the real property;

(3) the real property is at any time after the acquisition leased to the seller or to certain persons related to the seller;

(4) the seller or any person related to the seller provides nonrecourse financing in connection with the acquisition of the real property and such debt is subordinate to any other indebtedness on the property or bears a rate of interest which is significantly less than the rate available from an unrelated person.

The bill would apply to taxable years beginning after December 31, 1982.

Discussion

The debt-financed property rules are intended to prevent the use of an exempt organization's tax exemption for the benefit of taxable persons. In the absence of the debt-financed property rules, it would be much easier to provide benefits to taxable persons through conversion of ordinary income to capital gain income, through the payment of a higher price for property than a taxable investor would pay, or through the transfer to a taxable person of the tax benefits associated with an investment made by a tax-exempt organization. We do not believe the provisions of H.R. 676 would prevent these uses of a tax-exempt organization's exemption for the benefit of a taxable person.

One possibility for abuse exists because the bill would permit nonrecourse financing by the seller if the financing provided is not subordinate to other debt on the property and the rate of interest is not significantly less than the market rate. These restrictions would not prevent the conversion of ordinary income to capital gain income in the hands of the seller or the payment of an inflated price for the property based on the exempt organization's ability to receive rental income from the property tax-free.

The bill also would create significant incentives for the development of methods for transferring to taxable persons the substantial tax benefits arising from leveraged real estate investments by tax-exempt organizations. H.R. 676 contains no provisions to prevent partnership allocations that would transfer the tax benefits on a partnership's real estate investment from tax-exempt partners to taxable partners. Through such partnership allocations, taxable persons could obtain significant tax deferral benefits and could convert ordinary income to capital gain income in a wide variety of transactions. Indeed, the possibilities for using partnership allocations to transfer tax benefits from tax-exempt partners to taxable partners are so varied that it is doubtful that rules could be drafted to prevent all abuses of this sort. Additionally, the bill would give tax-exempt educational institutions an incentive to solicit and accept gifts of real estate tax shelters that have passed the "cross over" point at which the taxable income exceeds the cash flow produced. Charitable contributions of such investments would provide further tax advantages to the taxable investors.

The proponents of H.R. 676 argue that the investment needs of schools are no different from the investment needs of pension trusts, and therefore the exception to the debt-financed proper' rules for pension trusts should be extended to schools. In enacting the special exception for pension trusts, Congress

indicated that pension trusts were distinguishable from other tax-exempt organizations because the purpose of the exemption for pension trusts was to permit the accumulation of investment income and because the assets of pension trusts are ultimately taxed to pension recipients. In view of these distinguishing characteristics, Congress considered it appropriate to provide a special rule for pension trusts alone. In fact, the law as enacted contains a specific statement that the exception for pension trusts is not to be considered as precedent for any further exceptions to the debt-financed rules.

While the distinctions drawn between pension trusts and other tax-exempt organizations may be tenuous, we do not think that the existence of a special exception for pension trusts justifies a similar exception for schools. We see the same problems with the pension trust exception as we have discussed concerning H.R. 676. Since we do not consider the pension trust provision to be a desirable exception to the debt-financed property rules, we oppose expansion of that provision.

Furthermore, the arguments for expansion of the pension trust exception to schools apply equally to other public charities, and perhaps to all tax-exempt organizations. In addition, a broad exception for debt-financed investments in real estate could be used as precedent for adding exceptions for debt-financed investments in other types of property. For example, the pension trust exception has been used as a model for proposed legislation (S. 1549) to provide an exemption for debt-financed investments in working interests in oil and gas wells.

We also note that expansion of the pension trust exception to educational institutions would result in a revenue loss of approximately $200 million in fiscal years 1985 through 1987.

The Treasury Department believes that the debt-financed property rules are sound and should not be narrowed by piecemeal exceptions such as the one proposed in this bill for real estate investments by schools. Enactment of the bill would create new opportunities for abuses involving nonrecourse seller financing and the transfer to taxable persons of tax benefits attributable to investments by tax-exempt organizations. Accordingly, we must oppose H.R. 676.

The Senate Finance Committee recently approved a provision that would extend to certain educational institutions the exception to the debt-financed property rules currently provided for pension trusts. Under the Finance Committee provision, however, the exception would not be available to either pension trusts or schools if financing was provided by the seller or a party related to the seller, or if the debt-financed property was

acquired or held by a partnership in which taxable entities or organizations which are not eligible for the exception are partners. The Finance Committee provision thus significantly reduces the opportunities for abuse. If the Congress decides to expand the exception to the debt-financed property rules, we would strongly support the inclusion of the restrictions contained in the Senate provision.

Finally, we would like to bring to the Committee's attention the possibility that pension trusts may avoid the currently applicable restrictions on debt-financed property through investments in qualified segregated asset accounts of insurance companies. We would like to work with the Committee to ensure that the rules cannot be avoided through the use of segregated asset accounts or any other collective investment vehicle.

H.R. 2697
Increase in Standard Mileage Rate for Purposes of Computing Charitable Contribution Deductions

Background

Under current rules the rate taxpayers are permitted to use for computing the business expense deduction for use of an automobile is 20.5 cents per mile for the first 15,000 miles. (Above 15,000 miles, and for fully depreciated cars, the rate is 11 cents.) Taxpayers who use an automobile in connection with performing services for charitable organizations presently may use a standard mileage rate of 9 cents per mile in computing their charitable contribution deductions. (Nine cents also is the mileage rate used for determining medical and moving expense deductions). The reason for the difference in the two mileage rates is that the standard mileage rate permitted for purposes of the charitable contribution deduction reflects an allowance only for gas and oil -- the only expenses actually paid in performing the charitable service. On the other hand, the standard mileage rate for business use of an automobile reflects an additional allowance for depreciation, insurance, general repairs and maintenance, and registration fees.

H.R. 2697

H.R. 2697 would amend section 170 of the Internal Revenue Code to provide that the amount of the charitable contribution deduction allowable for expenses incurred in the operation of an automobile in performing services for a charitable organization shall be determined at the same mileage rate used to compute business expense deductions.

Discussion

Allowance of the lower mileage rate for purposes of the charitable contribution deduction reflects the longstanding administrative position that the only expenses for which charitable deductions should be allowed are those actually paid by the taxpayer in performing the charitable service. We believe there are sound reasons for this administrative position, upon which the different mileage rates are based. Accordingly, the Treasury Department opposes H.R. 2697.

Section 170 of the Code allows a deduction for contributions or gifts to, or for the use of, a qualifying charity only if "payment is made within the taxable year." Because the Code requires "payment," the charitable deduction of a taxpayer who operates his vehicle in performing services for charity is limited to the taxpayer's out-of-pocket costs. Since gasoline and oil are the only items that the taxpayer buys to use solely for the charity, the cost of gas and oil is the only automobile expense that is properly deductible. This interpretation of the law is carried out through the 9 cent mileage allowance.

The "payment" requirement contained in section 170, as it applies to the use of automobiles, is appropriate because it is difficult to quantify indirect costs that are properly attributable to charitable use of automobiles. Charitable use of automobiles typically accounts for a very small fraction of total use. Because of this, the owner of the vehicle would incur most costs attributable to owning his automobile whether or not he used the car for charitable activities. An owner incurs the vast majority of costs, such as depreciation in value, general maintenance, and insurance, merely as a result of the increasing age and the personal use of his car. Thus, such an owner should not be considered as "paying" to or for the benefit of charity costs that are largely fixed. While it may make sense to allocate these costs on a strictly pro rata basis for business vehicles, where a large portion of use often is business use, such a pro rata allocation does not reflect economic reality in the charitable use setting.

Another reason for maintaining the "payment" requirement as it applies to automobile use is to avoid setting an undesirable precedent for determining deductions for charitable use of other property. If charitable deductions were allowed for indirect costs of operating an automobile, then similar deductions logically should be allowed for charitable use of other property, such as wear and tear on a home made available for occasional use by a charity. If this were done, the IRS would be faced with significant compliance problems.

It should be noted that the current charitable mileage allowance causes no significant unfairness to taxpayers. According to studies performed for the IRS, 9 cents per mile is a generous estimate of the costs of gasoline and oil. In addition, if a taxpayer's actual expenses for gasoline and oil in performing services for charity exceed 9 cents per mile, he may deduct the amount of his actual expenses in lieu of the mileage allowance.

Finally, increasing the charitable mileage allowance as proposED in H.R. 2697 would reduce Federal revenues by an estimated $445 million is fiscal years 1984 through 1987. These revenue losses would increase each year. In view of current Federal deficits, we strongly oppose this reduction in Federal revenues.

H.R. 4114
Tax Treatment of Nonqualified Employee Stock Options

Background

Under present law, the tax treatment of employee stock options generally is governed by section 83 in the case of nonqualified options, or by section 421 in the case of options granted pursuant to employee stock purchase plans meeting the requirements of section 423, or incentive stock options meeting the requirements of section 422A. Section 83 provides that the value of a stock option constitutes ordinary income to the employee when granted only if the option itself has a readily ascertainable fair market value at that time. Employees receiving options without a readily ascertainable value are taxed when the option is exercised (or six months later, if the stock is subject to certain securities law restrictions) on the difference between the value of the stock at exercise and the option price. The timing of the employer's deduction coincides with the employee's recognition of income.

In the case of options granted under employee stock purchase plans, there are no tax consequences upon either grant or exercise of the option. Instead, provided that the option is priced at at least 100 percent of the stock's fair market value at the date of grant, and the employee meets special holding period requirements, the employee is taxed when the stock is sold at capital gain rates upon any fluctuations in the stock's fair market value following the date of option grant. If the option was priced at between 85 percent and 100 percent of the stock's fair market value at date of grant, the employee is taxed upon sale of the stock at ordinary income rates on the amount of ar such discount (or, if less, on the difference between the fai

market value of the stock at the date of disposition and the amount paid for the stock under the option), and at capital gain rates on any gain in the stock's value over the fair market value of the stock on the date of option grant. No business expense deduction is allowed to the employer with respect to the grant or exercise of an employee stock purchase plan option, although the employer can claim a business expense deduction at the time the employee disposes of the stock in the amount of any ordinary income recognized at that time by the employee. In order for these options to qualify for this special treatment, an employee stock purchase plan by its terms must not grant options to any employees who own (or possess options to purchase) more than 5 percent of the corporation, but must grant options on a nondiscriminatory basis to all other employees (with the exception of part-time employees, recent hires, officers, supervisors, and highly compensated employees). In addition, the option price must equal or exceed 85 percent of the stock's fair market value at time of grant. Finally, no employee may purchase more than $25,000 in optioned stock in any year.

In the case of incentive stock options (ISOs), there are no tax consequences when the option is granted or when the option is exercised (except for possible alternative minimum tax consequences to the employee). If the employee holds the stock for a special time period after exercise of the option, the employee is taxed at capital gain rates when the stock is sold. No business expense deduction is allowed to the employer with respect to the grant or exercise of an ISO. In order to qualify for this special treatment, an ISO must satisfy a number of different requirements outlined in section 422A. For example, the option price must equal or exceed the stock's fair market value at the time of grant. No more than $100,000 in ISOs may be granted to any employee in any year. ISOs must be nontransferable, except by reason of death of the employee. Finally, no ISO can be exercised while an earlier ISO is outstanding.

H.R. 4114

H.R. 4114 would provide new rules for the tax treatment of nonqualified stock options. Like current law, the difference between the value of the stock at the exercise date and the option price would constitute ordinary income to the employee, and a corresponding business expense deduction to the employer. However, unlike the current rules relating to nonqualified options, the employee would be able (subject to the employer's agreement) to defer recognition of ordinary income on the option spread from the date of option exercise until the date of disposition of the stock. The amount included in ordinary income would not be affected by any appreciation or depreciation in the

value of the option stock after the date of exercise. Instead, the amount included in ordinary income would be added to the basis of the stock for purposes of determining capital gain or loss from the disposition. The corporation's deduction would also be deferred until the date of disposition of the option stock.

We understand that the sponsors of H.R. 4114 have agreed to certain amendments to the bill as introduced, which are designed to limit the abuse of these tax-deferred nonqualified options by highly compensated employees. These amendments would impose on this new class of options certain limitations similar to those affecting ISOs, including a $100,000 per year cap on the amount of options granted to any employee and a requirement that the options be exercised in the order granted.

Discussion

The Treasury Department strongly opposes H.R. 4114. This bill would create an unnecessary exception from the rules of section 83, by allowing an employee to defer tax indefinitely on compensation paid in the form of stock transferred pursuant to the exercise of an option which had no readily ascertainable fair market value when granted. Section 83 currently allows an employee who receives property in exchange for services to defer recognition of income only until the lapse of any restrictions upon the sale of such property. No employee should be allowed to defer income recognition beyond the date on which he could sell the property that is transferred to him. By providing yet another means for highly compensated individuals to enjoy special tax benefits, enactment of this bill would further undermine the public's perception of the fairness of the income tax system.

In creating this tax deferral opportunity for employees who exercise nonqualified stock options, H.R. 4114 admittedly requires the employer corporation to agree to the corresponding deferral of its deduction. However, in many cases the employer's approval would not be difficult to obtain, especially in the case of key employees who likely would participate in the employer's decision. Furthermore, such a joint election by the corporation and its employee is likely to be filed only in situations where there is a net tax savings as between the corporation and the employee.

The additional limitations suggested by the sponsors of the bill will not, in our opinion, eliminate abuse of this provision by officers, shareholders, and highly compensated employees. If these option programs are indeed intended (as the sponsors of H.R. 4114 have asserted) for use by a broad-based cross sectior of employees, then nondiscrimination rules must be added to th

bill, similar to the rules applicable to other statutory fringe benefits. For example, no more than 25 percent of these options should be provided to the class of employees who are owners of 5 percent or more of the stock, company officers, or employees whose annual compensation exceeds two times the defined contribution limitation for pension plans (currently $60,000). The same percentage limitations should apply to employees benefitting from elections by the employer to defer tax on option exercise. In addition, to ensure further against abuse of these provisions by highly compensated employees, the $100,000 annual limit on option grants to any employee should be reduced by any ISOs granted to the employee in that year, and any amount deferred by reason of the election should be treated as an item of tax preference for purposes of the individual alternative minimum tax.

We also recommend that, like ISOs, these options should be granted at a price not less than the fair market value of the underlying stock at the date of grant, and that they be exercisable during the employee's lifetime only by the employee. Moreover, in order to avoid loss of revenues to the social security system, we recommend that the bill be clarified to insure that the option spread will be subject to both employer and employee FICA taxes at the time of option exercise. (If social security taxes were deferred as well as income taxes, and if the stock received on exercise were sold after an employee's termination of services, it is likely that both the employee and employer could argue that no FICA taxes were owed after the employee's retirement.) Finally, we recommend that the rules of H.R. 4114 governing the deferral election by the employer and employee be clarified to require that the election be filed within a short period of time after exercise of the option. As proposed in the bill, option stock covered by such an election should either be retained by the corporation for the benefit of the employee, or stamped with a restrictive legend or stop-transfer instruction indicating that the corporation must be notified of any transfer.

The above-described limitations would help ensure that this new type of stock option would be made available to a nondiscriminatory cross-section of employees. Nevertheless, even if the bill were modified to include these limitations, we would continue our opposition to this legislation.

H.R. 4357
Preferential Payments to Certain Shareholders and Golden Parachute Arrangements

Background

Recently there has been a significant amount of publicity about corporate stock acquisitions in which a higher purchase price per share is offered to large shareholders of the target corporation than is offered to smaller shareholders. In addition, there has been a great deal of publicity concerning so-called "golden parachute" arrangements between corporations anticipating the possibility of a hostile takeover attempt and their key personnel. Typically these arrangements provide for the payment of cash or property (frequently in excess of historic compensation) to key executives in the event of a change (or threatened change) in ownership or control of the employer corporation.

H.R. 4357

H.R. 4357 would amend the Internal Revenue Code in two respects to penalize the arrangements described above. First, in the case of stock purchased for more than its fair market value from any shareholder owning one percent or more of the voting power of the corporation, the shareholder would include in gross income as ordinary income any gain realized on the transaction, and the company would be disallowed any deduction for any amount attributable to the transaction. Second, a corporation would be denied any deduction for payments under any management protection agreement that discriminates in favor of officers, shareholders, or highly compensated employees. An employee who enters into such an agreement would include in gross income in the year of termination of services the present value of all amounts (including property) to be paid under the agreement.

Discussion

The Treasury Department cannot support H.R. 4357. We question in general the necessity of addressing either type of arrangement, troubling as they may be, through changes in the income tax law. These arrangements can be addressed much more sensibly and effectively by the Securities and Exchange Commission and through state law limitations on corporate waste and unequal treatment of shareholders.

H.R. 5028
Extension of Tax-Free
Group Legal Services Plans

Background

Effective for taxable years beginning after 1976 and before 1985, section 120 of the Internal Revenue Code provides an exclusion from an employee's gross income for amounts contributed by an employer to a qualified group legal services plan for employees or their spouses or dependents. The exclusion also applies to the value of any personal legal services rendered (or reimbursements for such services paid) under the plan to an employee, or to the employee's spouse or dependents. Section 501(c)(20) provides tax-exempt status for any trust or organization that functions exclusively to accept funds for, or otherwise forms part of, a group legal services plan.

In order to qualify for this exclusion, a group legal services plan must meet a number of requirements. First, the legal services must be provided for the exclusive benefit of employees or their spouses or dependents. Second, the plan must provide only "personal" legal services and cannot provide legal services relating either to a participant's trade or business or to the management, conservation or preservation of property held for the production of income. Third, the employer must fund the plan through prepayment of, or advance provision for, all or a part of the legal benefits provided under the plan. These prepaid employer contributions must be paid either (a) to insurance companies or to organizations or persons that provide personal legal services or indemnification against the cost of such services; (b) to tax-exempt group legal service organizations; (c) to other tax-exempt organizations that pay or credit the employer contributions to a tax-exempt group legal services organization; (d) to providers of personal legal services under the plan; or (e) to a combination of the above-listed permissable arrangements.

The fourth qualification requirement is that the plan must not discriminate in either contributions, benefits, or eligibility for enrollment, in favor of officers, shareholders, self-employed individuals, or highly compensated employees. In addition, no more than 25 percent of the plan contributions can be provided to owners of more than 5 percent of the business (or to their spouses or dependents). The final qualification requirement is that the plan must apply to the Internal Revenue Service for recognition of its satisfaction of all the above-listed rules.

Code section 120 was enacted in 1976 in order to create a means for employers to provide tax-free personal legal services to their employees. The exclusion as originally enacted was available only for taxable years ending before January 1, 1982, but was extended through the end of 1984 by the Economic Recovery Tax Act of 1981.

Prior to the enactment of section 120, any employer-provided legal services were included in an employee's gross income. Employees could then deduct only the cost of those legal services rendered in connection with a trade or business or investment property, or in connection with the determination, collection or refund of any tax. By enacting section 120, Congress has created a tax exclusion for otherwise nondeductible personal legal services provided to employees through employer-funded plans.

This exclusion is in two respects more attractive to employees than the deduction available for business-related legal services. First, the exclusion applies to any employee receiving legal services under the plan, whereas a comparable business expense deduction generally would be available only to employees who are able to itemize their deductions. Second, employer-provided group legal services benefits are free from social security taxes as well as from income taxes. No comparable exclusion exists for wages used to pay business-related legal services.

Treasury opposed both the enactment of section 120 in 1976 and its extension in 1981, on grounds that equity requires that compensation received in the form of personal legal services (whether paid in kind or in cash) should be taxed the same as any other type of compensation received by employees. Providing an exclusion from income for employer-provided personal legal services is contrary to the well established tax policy of denying tax deductions for personal expenditures.

H.R. 5028

H.R. 5028 would eliminate the December 31, 1984 sunset of section 120 and extend the provision permanently. The bill also would continue the tax-exempt status of group legal services organizations.

Discussion

The Treasury Department opposes H.R. 5028 for the same reasons we opposed the enactment of section 120 in 1976. Compensation paid in the form of legal services should be taxed in the same manner as any other type of compensation received employees. The existence of special exemptions for particula

types of compensation only encourages employees to rearrange their affairs so that compensation is received in a non-taxable form. The restructuring of an employee's compensation package to substitute nontaxable legal services for taxable compensation is made easier whenever group legal services are offered as an alternative to cash or other benefits under a cafeteria plan. The exclusion for group legal benefits permits certain employees to pay no tax on their personal legal costs, simply because their employers operate qualified section 120 plans. This produces an inequitable tax advantage for participants in group legal services plans over all other individuals (who cannot deduct their personal legal expenses). Moreover, even among participants in any given section 120 plan, the tax exclusion provides the greatest tax benefits to participants with the largest incomes.

We also are concerned that both the rules granting tax-exempt status to group legal services organizations and governing employer deductions for contributions to such organizations provide unwarranted tax advantages. The tax exemption accorded to the income of group legal services organizations reduces both the income and social security tax bases and thus requires higher tax rates to be imposed on other forms of income. Furthermore, the current rules governing an employer's deduction for contributions to a group legal services organization provide an employer with excessive discretion in determining the level of deductible contributions that may be made for any year. The result is that an employer -- particularly a closely held company -- may be able to use such an organization as a tax-favored savings account for its own and its key employees' benefit.

For these reasons, we oppose the extension of the exclusion from gross income for payments to or under qualified group legal services plans and the tax exemption for group legal services organizations.

That concludes my prepared remarks. I would be happy to answer any questions you may have.

THE WHITE HOUSE

WASHINGTON

October 10, 1984

MEMORANDUM FOR KATHERINE SHEPHERD
PRESIDENTIAL CORRESPONDENCE OFFICE

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: New Items From the Boehm Studios

By memorandum dated September 20, 1984, you requested guidance on a reply to a letter to the President from Mrs. Helen F. Boehm. I have prepared a reply to Mrs. Boehm, for my signature. If you agree, I will send it.

Attachment

FFF:JGR:aea 10/10/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

October 10, 1984

Dear Mrs. Boehm:

Thank you for your letter of September 17, 1984 to the President. That letter and the accompanying materials raise certain legal questions, and accordingly the letter has been referred to this office for consideration and direct reply.

We are concerned that featuring the quotation from the President on the brochures for "The Great American Heritage Collection" could contravene established White House policy on commercial endorsements. The White House adheres to a policy of not approving any use of the President's name, likeness, signature, or photograph in any manner that suggests or could be construed as an endorsement of a commercial product or enterprise. I am certain that you will readily appreciate the need for this policy. In this instance, there is the danger that the use of the quotation of the President to introduce your new collection could be misinterpreted by some as an endorsement of the collection by the President. Accordingly, I must ask that you not use the quotation or the President's name on the brochures. I hope that you will understand why we must make this request, and also that it in no sense constitutes an adverse reflection on the exciting new collection featured in the brochure.

You also expressed your hope in your letter that the collection could be used in some way to raise funds for the party. There are of course various rules and regulations governing political fundraising, so any particular proposal you have in mind would have to be carefully reviewed prior to implementation to ensure compliance with all applicable laws. If you have any questions, please do not hesitate to contact this office, or counsel for the party, as may be appropriate.

Thank you for sharing your plans for this new collection with us.

Sincerely,

Orig. signed by FFF

Fred F. Fielding
Counsel to the President

Mrs. Helen F. Boehm
25 Fairfacts Street
Trenton, NJ 08638

FFF:JGR:aea 10/10/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

October 10, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: New Items From the Boehm Studios

Katherine Shepherd of Presidential Correspondence has referred to you a letter to the President from Mrs. Helen F. Boehm, of the Boehm porcelain company. Shepherd states that Mrs. Boehm is a friend of the Reagans. In her letter Mrs. Boehm advises that a quotation from a Labor Day address of the President -- "to make America great again and let the Eagle soar" -- has inspired a new line of Boehm china, featuring patriotic eagles. She enclosed with her letter a mock-up brochure promoting the new line, prominently featuring the President's quotation and identifying the source. Mrs. Boehm wrote that she hopes "The Great American Heritage Collection" "can be utilized to aid the party in raising some important dollars for the Republican Inaugural Committee."

The brochure as presently designed may convey the false impression that the President has endorsed "The Great American Heritage Collection." This would not only contravene established White House policy concerning endorsement of commercial products, but also, given this particular pattern, call into serious question the President's taste in dinner service. Of course, only the former point need be made in the reply to Mrs. Boehm. The attached draft reply also raises a cautionary note about use of the collection to raise funds for the party. Since Mrs. Boehm is reportedly a personal friend of the Reagans, I have prepared a memorandum to Shepherd in order that the proposed reply may be reviewed by her office before being sent.

Attachment

ID# 248062

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

DATE RECEIVED: SEPTEMBER 20, 1984

NAME OF CORRESPONDENT: MRS. HELEN F. BOEHM

SUBJECT: INFORMS OF CREATION OF NEW ITEMS FROM THE BOEHM STUDIOS AND FORWARDS MOCK-UP OF BROCHURE

ROUTE TO: OFFICE/AGENCY	(STAFF NAME)	ACTION ACT CODE	ACTION DATE YY/MM/DD	DISPOSITION TYPE RESP	DISPOSITION C D	DISPOSITION COMPLETED YY/MM/DD
KATHERINE C. SHEPHERD	DD	ORG	84/09/20	_____	-	__/__/__
CWAT18	REFERRAL NOTE:	D	84/09/24	_____	S	84/10/04
	REFERRAL NOTE: DD		__/__/__	_____	-	__/__/__
	REFERRAL NOTE:		__/__/__	_____	-	__/__/__
	REFERRAL NOTE:		__/__/__	_____	-	__/__/__

COMMENTS: HELEN, B2

ADDITIONAL CORRESPONDENTS: MEDIA: L INDIVIDUAL CODES: ___ ___ ___

MI MAIL USER CODES: (A)_____ (B)_____ (C)_____

*ACTION CODES:	*DISPOSITION CODES:	*OUTGOING CORRESPONDENCE:
*A-APPROPRIATE ACTION	*A-ANSWERED	*TYPE RESP=INITIALS OF SIGNER
*C-COMMENT/RECOM	*B-NON-SPEC-REFERRAL	CODE = A
*D-DRAFT RESPONSE	*C-COMPLETED	*COMPLETED = DATE OF OUTGOING
*F-FURNISH FACT SHEET	*S-SUSPENDED	
*I-INFO COPY/NO ACT NEC		
*R-DIRECT REPLY W/COPY		
*S-FOR-SIGNATURE		
*X-INTERIM REPLY		

REFER QUESTIONS AND ROUTING UPDATES TO CENTRAL REFERENCE (ROOM 75,OEOB) EXT. 2590
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS MANAGEMENT.

BOEHM

International Creators of Porcelain Art

September 17, 1984

President Ronald Reagan
THE WHITE HOUSE
1600 Pennsylvania Avenue
Washington, D.C. 20006

Dear Mr. President:

Your quote ... "to make America great again and let the Eagle soar," made on Labor Day in California has generated some ideas in our minds as to a way to help the Republican Party attain its goals.

Enclosed is a mock-up of a brochure -- "The Great American Heritage Collection" -- by the Boehm Studios that has been put together to reflect the upsurge of patriotism you are fostering. We are proud of the collection and hope it can be utilized to aid the party in raising some important dollars for the Republican Inaugural Committee.

I will be writing to the proper people on your staff regarding the logistics of working together but wanted you to see the brochure immediately.

Keep up the good work as we here at the Boehm Studios rely a great deal on your leadership in keeping America proud, great, safe, and prosperous.

Respectfully and sincerely yours,

Helen F. Boehm

HFB/dk
encs. 2

U.S.A.-Trenton: Edward Marshall Boehm, Inc., 25 Fairfacts St., Trenton, N.J. 08638, Telephone: (609) 392-2207, Telex: 510-681-8407
New York: Boehm Showroom, 41 Madison Ave., Fourth Floor, 4-B, New York, N Y 10010, Telephone: (212) 679-2861
England-Boehm of Malvern England Ltd., Tanhouse Lane, Malvern WR14 1LG, England, Telephone: (0886) 32111, Telex: 338759 Boehm G.

THE WHITE HOUSE
WASHINGTON

JR

Date: 9/20/84

To: Fred Fielding

Although I know that Mrs. Helen Boehm is a friend of the Reagans, I thought that the attached should be brought to your attention. Please note the proposed brochure on the Golden Eagle in which the President is quoted. (I also note that the piece will be cast by an English firm of silversmiths.) I want to make sure that any response to Mrs. Boehm from the President will not constitute an endorsement of the Edward Marshall Boehm Studios in general or that particular sculpture.
Thank you for your help.

KATHERINE SHEPHERD
Presidential Correspondence
Office
Room 98, x7610

THE WHITE HOUSE

WASHINGTON

October 12, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Request for Permission to Declare October 13-21 Child Abuse Awareness Week

Brother John Foster, Director and Founder of the Kids for Christ Foundation of Portsmouth, Ohio, has written Merrie Spaeth to ask for permission from the President to declare next week, October 13-21, Child Abuse Awareness Week in Portsmouth. The week was chosen because there will be a seminar on the subject in Portsmouth at that time. Foster is requesting Presidential permission because some misguided bureaucrat in the city manager's office told him it was required.

Portsmouth, of course, can have any week it wants without Presidential permission. Congress and the President have in fact acted in this area: Congress passed Public Law 98-230, which the President signed on March 12, designating April 1984 as "National Child Abuse Prevention Month." The appropriate proclamation was issued on April 3. The attached letter advises Foster that no Presidential permission is required for the activities he has planned, and also advises him of the action taken in April at the Federal level.

Attachment

THE WHITE HOUSE

WASHINGTON

October 12, 1984

Dear Brother Foster:

This responds to your letter of October 4, 1984, to Merrie Spaeth of the White House staff. In that letter you reviewed some of the activities to promote child abuse awareness you have planned for October 13-21 in Portsmouth. You stated that you had been advised that you needed permission from the President before designating that period Child Abuse Awareness Week in Portsmouth.

No such permission from the President is required for a local program of the type described in your letter. It is true that the President, from time to time, issues proclamations calling upon all Americans to observe a particular day, week, or month, but those proclamations are nation-wide and are typically issued in response to a joint resolution passed by Congress. For example, and of particular interest in the present context, the President signed a proclamation on April 3 of this year designating April 1984 as "National Child Abuse Prevention Month." The proclamation was authorized and requested by Congress pursuant to Public Law 98-230, which the President signed into law on March 12, 1984. I have enclosed for your information a copy of this proclamation.

This proclamation, and the wide range of other steps the Administration has taken in this area, demonstrate our commitment to do everything we can about this tragic problem. Thank you for your inquiry, and best of luck with your program.

Sincerely,

Orig. signed by FFF

Fred F. Fielding
Counsel to the President

Brother John D. Foster
Director & Founder
Kids for Christ Foundation
P.O. Box 1049
Portsmouth, Ohio 45662

FFF:JGR:aea 10/12/84
cc: FFFielding/JGRoberts/Subj/CHron
bcc: Merrie Spaeth
Media Relations

ID # 200380 CU

JV

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 84/10/11

JGR

Name of Correspondent: John D. Foster

☐ **MI Mail Report** **User Codes:** (A) _____ (B) _____ (C) _____

Subject: Requesting permission to declare October 13th through October 21st Child Abuse Awareness Week

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CWHolland	ORIGINATOR	84/10/09			/ /
	Referral Note:				
CWAT18	D	84/10/10		S	84/10/20
	Referral Note:				
		/ /			/ /
	Referral Note:				
		/ /			/ /
	Referral Note:				
		/ /			/ /
	Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

5/81

KIDS FOR CHRIST FOUNDATION
P.O. Box 1049
Portsmouth, Ohio 45662

265380

Bro. John D. Foster
Director & Founder

Office:
Residence:
1-614-858-6976

October 4, 1984

Mrs. Marry Spaeth
Director Of Media Relations
Room 164 O.E.O.D.
Washington, DC 20500

Dear Mrs. Spaeth,

We are sending you this letter to ask for permission to declare October 13th through October 21st Child Abuse Awareness Week in our city, Portsmouth, Ohio and/or County of Scioto.

The Honorable Bob McEwen is sending us a U.S. Flag, which is being flowen over the White House in memory of children who have died over the years because of Abuse, to be flown at half mast in our city during the week of the 13th.

Our Honorable Juv. Judge James Kirsch thought this would be a good week for us to do this because of the Seminar going on in our area during the week of the 13th.

We have singing groups ready, Eagle Scouts to post the colors and we are trying to get a dinner togather to honor the Republican Candidates.

We have everything set up and permission from our City Managers Office and they called us today and said we must have permission from our President before we could do it. Please call us as soon as possible to let us know what to do. We have a lot of work in this event and we would appreciate anything you can do to help us.

Please forgive us for not asking sooner. We didn't know. May God bless you.

Sincerely,

Bro. John D. Foster
Director & Founder

"There Is No Excuse For Child Abuse"